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NO. 92-1528

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STATE OF OHIO,

Petitioner,

vs.

JOHN C. KNUCKLES, SR.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Ohio

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REPLY TO BRIEF IN OPPOSITION

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Addressing the statement of the case, Respondent's implication that "Petitioner neglect[ed] to disclose" that the state's firearm examiner was unable to conclusively determine the source of the death bullets [Br. In Opp., at 2] is belied by any fair reading of the Petition. [See Petition, at 5.]

We would further point out that Respondent's brief perpetuates a glaring factual error of the Ohio Supreme Court majority. Respondent, by quoting the court below, repeatedly presents the police officer's statement to Respondent as, "We *want* to talk to you about Bobby Bennett," (emphasis added), whereas the trial record is clear that the statement at issue is, "We *wanted* to talk to you about Bobby Bennett." (Record at 18, 26, 33, and 41) The two dissents in the Ohio Supreme Court were faithful to the record, and to the extent that the majority's error made any difference in the majority decision below, such error cannot go without

recognition here. Respondent's attempt to capitalize on such error before this Court by repeated quotation of the error is disingenuous, at best.

Respondent's argument that Detective Wells intended to interrogate him does not find factual support in the record, where the officer testified that he had no intent to "keep on questioning" Respondent (Record at 49), but rather, it was Wells' intent to clarify the situation by simply informing Respondent that they wanted to talk to him about Bennett rather than the bad check charges (Record at 47-48), consistent with the officer's routine practice, (Record at 49).

Addressing jurisdiction, Respondent does not dispute that the first and second questions presented in the Petition are unequivocally federal questions that are properly preserved for this Court's review. In his suggestion that this Court lacks jurisdiction over the third question, however, Respondent fails to advise the Court that the "fruit of the poisonous tree" issue [complete with citation to *Wong Sun* v. *United States*, 371 U.S. 471 (1963)] was first raised by Respondent in the trial court by his own written motion, (see "Motion to Suppress Illegally Obtained Statement of Accused," filed in trial court on April 26, 1989; Record in Ohio Supreme Court, at 4), that Respondent touched upon the "fruit" issue throughout his appeals, and that Petitioner made the very argument set forth in the Petition (Petition at 18-22), almost *verbatim*, before the Ohio Supreme Court in Petitioner's motion for rehearing when that Court denied rehearing, 66 Ohio St. 3d 1405, 605 N.E.2d 1262 (December 30, 1992). In short, the failure of the Ohio Supreme Court to address this important question is not the fault of the parties below. Prior to the Ohio Supreme Court's December 15, 1992 decision suppressing Respondent's statements, Petitioner had no occasion to debate the scope of the suppression order; before the Ohio Supreme Court's judgment there was no suppression order, as the trial court and intermediate appellate court had found that the statements (and logically, the "fruits" thereof) were admissible. If Respondent's argument is correct, further

litigation of this question would be required. However, it is clear that the necessary factual record has been developed in the trial court, and the Ohio Supreme Court had the opportunity to decide this question upon Petitioner's motion for rehearing, but that Court declined to do so.

By posing only a jurisdictional argument as to the third question presented, Respondent fails to address the merits of the issue which is ripe for review by this Court, given the clear conflict among the state courts, see, *e.g.*, *People* v. *Winsett*, 153 Ill. 2d 335, 606 N.E.2d 1186 (1992).

Addressing the merits of the first question presented, Respondent argues that the court below faithfully applied this Court's precedents, most particularly *Edwards* v. *Arizona*, 451 U.S. 477 (1981). However, this Court has clearly stated that *Edwards* does not impose anti-contact or anti-communication obligations upon the police after a suspect invokes his right to counsel, as the Ohio Supreme Court majority would appear to hold. In *Arizona* v. *Roberson*, 486 U.S. 675 (1988), where the Court applied *Edwards* in holding that a suspect's invocation of his right to counsel when he is arrested on one offense is presumed (in the absence of contrary proof) to apply to any subsequent interrogation as to other, separate investigations, this Court was careful to state that police are only barred from *interrogation* in the absence of counsel; "even if the police have decided temporarily not to provide counsel, * * *, they are free to inform the suspect of the facts of the second investigation as long as such communication does not constitute interrogation, see *Rhode Island* v. *Innis* [citations omitted]." *Arizona* v. *Roberson*, *id.*, at 687. The statement at issue, "We wanted to talk to you about Bobby Bennett," did not constitute interrogation; it was simply informational, and its brevity, informality, and lack of inquisitiveness indicate a lack of interrogation, see *Plazinich* v. *Lynaugh*, 843 F.2d 836, 840 (5th Cir. 1988). Without asking Respondent to speak, it simply informed him of the second investigation, *Arizona* v. *Roberson*, *supra*. Thus, contrary to the implication of the Ohio Supreme

Court's citation of *Arizona* v. *Roberson*, *supra*, [see *State* v. *Knuckles*, 65 Ohio St. 3d 494, at 496, 605 N.E.2d 54, at 55 (1992)], the Petitioner's argument in the case at bar is entirely consistent with this Court's decision in *Roberson*.

Respondent utterly failed to address the Petitioner's argument that the case at bar "squarely presents the question left undecided in *Smith* v. *Illinois*, 469 U.S. 91, at 99-100 (1984): ('Our decision is a narrow one. We do not decide the circumstances in which an accused's request for counsel may be characterized as ambiguous or equivocal as a result of *events preceding the request* * * *, nor do we decide the consequence of such ambiguity or equivocation.') (Emphasis added.)" [Petition, at 8.] Under the peculiar circumstances preceding Respondent's request, the Court is now presented with a rare opportunity to address the question left undecided in *Smith* v. *Illinois*, *supra*, and should do so.

CONCLUSION

For the reasons set forth in the Petition and in this Reply Brief, a writ of certiorari should issue to review the judgment of the Supreme Court of Ohio.

Respectfully submitted,

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